



7020-02

INTERNATIONAL TRADE COMMISSION

Certain Microfluidic Devices Investigation

[No. 337-TA-1068 (Rescission)]

Notice of the Commission's Determination to Institute a Rescission Proceeding; to Rescind Permanently a Limited Exclusion Order and a Cease and Desist Order; Termination of Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and rescind the remedial orders issued in the underlying investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 6, 2017, the Commission instituted this investigation based on a complaint filed by Bio-Rad Laboratories, Inc. of Hercules, CA; and Lawrence Livermore National Security, LLC of Livermore, CA (collectively, "Bio-Rad"). 82

FR 42115 (Sept. 6, 2017). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microfluidic devices by reason of infringement certain claims of U.S. Patent Nos. 9,500,664 (“the ’664 patent”); 9,089,844 (“the ’844 patent”); 9,636,682 (“the ’682 patent”); 9,649,635 (“the ’635 patent”); and 9,126,160 (“the ’160 patent”). *Id.* The Commission’s Notice of Investigation named as the sole respondent 10X Genomics, Inc. of Pleasanton, CA (“10X”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party to this investigation. *Id.* The Commission subsequently terminated the investigation as to the ’844 patent. Order No. 19 (Mar. 6, 2018); *unreviewed by* Notice (Apr. 16, 2018).

On September 20, 2018, the presiding administrative law judge issued the final initial determination (“ID”). The ID found a violation of section 337 by virtue of 10X’s infringement of the ’664, ’682, and ’635 patents. The ID found that 10X had not established a violation with respect to the ’160 patent. On December 4, 2018, the Commission determined to review various findings in the ID. 83 FR 63672 (Dec. 11, 2018).

On December 18, 2019, the Commission found a violation of section 337 with respect to the ’664, ’682, and ’635 patents. 84 FR 70999 (Dec. 26, 2019). The Commission also found no violation of section 337 with respect to the ’160 patent. *Id.* Having found a violation of section 337, and upon consideration of the statutory public interest factors, the Commission determined to issue a limited exclusion order (“LEO”) prohibiting further importation of 10X’s infringing microfluidic devices and a cease and desist order (“CDO”) against 10X. *Id.* On May 28, 2021, in an appeal initiated by Bio-Rad, the U.S. Court of Appeals for the Federal Circuit affirmed the Commission’s final determination. *Bio-Rad Labs., Inc. v. Int’l Trade Comm’n*, 998 F.3d 1320 (Fed. Cir. 2021).

On July 26, 2021, Bio-Rad and 10X entered into a settlement agreement that resolved the disputes concerning the subject matter of this investigation. Thereafter, on July 28, 2021, Bio-

Rad and 10X jointly petitioned for rescission of the Commission's remedial orders under section 337(k) (19 U.S.C. 1337(k)) and Commission Rule 210.76(a) (19 C.F.R. 210.76(a)). On August 6, 2021, OUII filed a response in support of the rescission petition.

The Commission has determined that the petition complies with Commission rules, *see* 19 CFR 210.76(a)(3), and that there are no extraordinary reasons to deny rescission of the remedial orders. Accordingly, the Commission has determined to institute a rescission proceeding and to permanently rescind the LEO and the CDOs. The rescission proceeding is hereby terminated.

The Commission's vote on this determination took place on August 25, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: August 25, 2021.

Katherine Hiner,
Supervisory Attorney.

[FR Doc. 2021-18654 Filed: 8/27/2021 8:45 am; Publication Date: 8/30/2021]